Department of Legislative Services

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FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 361 (Senator Madaleno, *et al.*)

Budget and Taxation and Education, Health, and Environmental Affairs — Ways and Means

Hunger-Free Schools Act of 2017

This bill extends through fiscal 2022 the provision in law that altered the enrollment count used to calculate State compensatory education aid in fiscal 2017 and 2018 for local boards of education that participate, in whole or in part, in the U.S. Department of Agriculture (USDA) Community Eligibility Provision (CEP).

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: General fund expenditures in FY 2019 through 2022 are affected. The effect will depend on CEP participation decisions by local school systems and on the annual change in total enrollment and the free and reduced-price meals (FRPM) enrollment counts for each school system. In the absence of the bill, local school systems will either opt out of CEP or face substantial losses in State compensatory aid. Revenues are not affected.

Local Effect: State aid to local school systems may be affected in FY 2019 through 2022.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: The bill extends the sunset date for Chapter 291 of 2015, which alters the compensatory enrollment count for local boards of education that participate, in whole or in part, in CEP such that it is the greater of:

(1) the sum of:

- the number of students in CEP participating schools identified by direct certification for the prior fiscal year;
- the number of students identified by the income information provided by the family to the school system on an alternative form developed by the Maryland State Department of Education (MSDE) for the prior fiscal year; and
- the number of students eligible for FRPM from any schools not participating in CEP for the prior fiscal year; *or*

(2) the sum of:

- the number of students eligible for FRPM from any schools not participating in CEP for the prior fiscal year; and
- for schools participating in CEP, the result of multiplying the prior fiscal year total enrollment by the percentage of FRPM-eligible students as compared to total enrollment in the year prior to participating in CEP. However, for the purpose of this calculation, schools participating in CEP in the pilot year may use the percentage of FRPM-eligible students during the pilot year.

Community Eligibility Provision

The Healthy, Hunger Free Kids Act of 2010, in part, amended the federal National School Lunch Act to provide an alternative to household applications for FRPM in high-poverty local educational agencies (LEAs) and schools. This alternative is referred to as CEP. To be eligible, LEAs and schools must meet a minimum level of students directly certified for free meals (40% of enrollment) in the year prior to implementing the option, agree to serve free lunches and breakfasts to *all* students, and agree to cover with nonfederal funds any costs of providing free meals to all students above amounts provided in federal assistance.

Reimbursement is based on claiming percentages derived from the percentage of students directly certified as increased by use of a multiplier, which is currently set at 1.6 but may range from 1.3 to 1.6 in subsequent years (as determined by USDA). The claiming percentages established for a school in the first year are guaranteed for a period of four school years and may be increased if direct certification percentages rise for that school. An LEA may participate in CEP for all schools in an LEA or only some schools, depending on the eligibility of the individual schools and financial considerations based on the anticipated level of federal reimbursement and other nonfederal support that may be available.

Participating schools that continue to meet the minimum direct certification percentage may immediately begin another four-year cycle after the initial cycle concludes. For

participating schools that fall below the minimum percentage at the end of their four-year cycle, there is the possibility to continue to participate for a grace year. A participating LEA or school may stop participating in CEP during the four-year cycle by notifying the State agency no later than June 30 of the prior school year.

Background: The State has distributed compensatory aid to local school systems since 1980 to fund programs for students with educational needs resulting from educationally or economically disadvantaged environments. Since fiscal 2004, the aid formula has used the number of students eligible for FRPM. Children from families (1) with incomes at or below 130% of the federal poverty level are eligible for free meals and (2) with incomes no greater than 185% of the federal poverty level are eligible for reduced-price meals.

The State compensatory aid formula uses a per pupil cost that is 0.97 times the per pupil funding level established in the foundation program. This cost is shared by State and local governments. The program level represents half of this cost per FRPM-eligible student, but because (1) the program is wealth equalized based upon wealth per full-time equivalent enrollment and (2) each county is guaranteed a minimum of 80% of the program level for each FRPM-eligible student, State aid per FRPM-eligible student varies by county and the State's share of the program is over 50% (*i.e.*, above the program level). FRPM enrollment in October 2016 is used in the formula to calculate the fiscal 2018 funding amount, which totals $1.3 billion in the Governor's proposed budget.

FRPM-eligibility information is generally collected either by direct certification or by household income applications. Direct certification verifies a student's FRPM eligibility by computer matching data records for various programs (such as Head Start, Even Start, Supplemental Nutrition Assistance Programs, and foster care) with enrollment lists. (The option to send letters to households for the purpose of direct certification has been significantly curtailed.) Thus, direct certification generally requires no additional action from a student's parents or guardians, while household income applications do require their action.

Schools and school systems that qualify for CEP (by matching 40% or more of their student population as eligible for free meals by direct certification) and that opt in to the CEP program can use an alternative method, involving a predetermined multiplier, to establish the number of FRPM-eligible students. By doing so, however, the school or school system will likely realize a decrease in the rate of return of household income applications because parents will no longer be required to complete the application to secure FRPMs for their children.

While the 40% direct certification threshold determines eligibility, given the CEP multiplier (which is intended to account for low-income families not captured by direct certification), MSDE advises that schools and school systems with 55% or higher direct

certification are far more likely to choose to participate in CEP. Data provided by MSDE indicate that there are presently 228 CEP-participating schools, including all schools in Somerset County (10) and Baltimore City (181), due to their system-wide participation since calendar years 2014 and 2015, respectively. Further, there are 130 non-CEP schools in Maryland with direct certification rates of at least 40%, and 31 of these schools have direct certification rates at or above 55%. **Exhibit 1** shows these 31 schools and the 228 CEP schools by county for the 2016-2017 school year.

Exhibit 1
CEP Participation and Potential

County	CEP Schools 2016-2017	Potential CEP Schools[1]
Allegany	0	3
Anne Arundel	0	3
Baltimore City[2]	181	
Baltimore	4	2
Calvert	0	0
Caroline	0	3
Carroll	0	0
Cecil	1	2
Charles	0	0
Dorchester	0	5
Frederick	3	1
Garrett	1	0
Harford	0	1
Howard	2	0
Kent	0	3
Montgomery	2	1
Prince George's	9	0
Queen Anne's	0	0
St. Mary's	0	1
Somerset[2]	10	
Talbot	0	0
Washington	11	0
Wicomico	3	5
Worcester	0	1
SEED School[3]	1	
Total	**228**	**31**

CEP: Community Eligibility Provision

[1] Schools with a relatively high potential for opting into CEP by virtue of a direct certification level at or above 55%.
[2] Baltimore City and Somerset County currently participate system-wide in CEP.
[3] A public residential boarding school serving students with special needs.

The Adequacy for Funding Education in Maryland Study recently completed by MSDE in collaboration with the Department of Budget and Management and the Department of Legislative Services includes a consultant's report on proxies other than FRPM that could be used to identify economically disadvantaged students for use in the State compensatory education formula. In the report, the consultant's covered potential hybrid measures, but found that an individual indicator of low-income status is superior to any of the hybrid measures. The report indicates that of four options that provide an individual indicator of economic need, the study team considers the continued use of FRPM and the use of direct certification to be the best proxies for identifying economically disadvantaged students.

Chapter 701 and 702 of 2016 established the Maryland Commission on Innovation and Excellence in Education, whose charge includes reviewing the consultant's report and recommending a FRPM proxy to be used for the compensatory aid formula. The commission's final report is due by December 31, 2017.

State Fiscal Effect: The effect of the bill on State aid to a given local school system during fiscal 2019 to 2022 is difficult to estimate precisely, because it will depend on decisions of multiple local school systems regarding CEP participation and alternative future trajectories in FRPM counts. Absent the bill, to the extent that schools continue to participate in CEP, FRPM enrollment counts decline substantially for those school systems and result in a potentially significant loss of compensatory aid resulting in general fund savings. For example, if Baltimore City were to remain in CEP in the absence of the bill, its FRPM count decreases by approximately 30%, and therefore, its compensatory aid decreases substantially. The bill provides a floor for the FRPM count for fiscal 2019 to 2022 only, which mitigates the potential loss of FRPM count, and therefore, compensatory aid for school systems that choose to participate in CEP during fiscal 2019 to 2022.

Alternatively, in the absence of the bill, a school or system may choose to opt out of CEP resulting in a FRPM count equivalent to the count without CEP, which would result in minimal impact on State compensatory aid, and therefore, the general funds for that school system.

The bill does not alter the count of FRPM students for schools not participating in CEP, nor does it alter the FRPM count after fiscal 2022. Given that nearly 230 schools presently participate in CEP, and only about 30 schools that do not participate have a direct certification rate at or above 55%, it is unlikely that under the bill, the percentage of schools participating in CEP will either decrease or increase considerably. Therefore, compared to recent FRPM-count trend lines, the bill is not expected to cause a substantial overall change in FRPM counts during fiscal 2019 to 2022.

For schools that already participate, or choose to participate, in CEP, the bill's effect on State aid to the school system will depend in part upon the ratio of the FRPM count to total

enrollment in the year prior to opting into CEP (base year). The effect during years of participation in CEP will depend on the differences in FRPM count derived from (1) continued use of that base year ratio; (2) the count that would have been attained without CEP participation; and (3) from the likely diminished rate of return of household income applications. By mitigating the *risk* of significant annual decreases in State compensatory education aid during this period, the bill will provide greater incentive for (1) a school or school system that already participates in CEP to continue participation and (2) a school or school system to commence participation in CEP.

Local Fiscal Effect: In the absence of the bill, local school systems will either opt out of CEP or face substantial losses in State compensatory aid. The bill will assure, for schools participating in CEP, that the FRPM count used to determine compensatory education aid at least keeps pace with the change in total enrollment in fiscal 2019 to 2022. For CEP schools, the FRPM count will continue to be based upon the ratio of FRMP to total enrollment in the base year. For Baltimore City, the FRPM count will continue to be 84.9% of total enrollment through fiscal 2022; for Somerset County, the FRPM count will continue to be 72.4%. Results for school systems that participate in part in CEP vary by school. Changes in State aid are expected to be minimal compared to recent year per pupil funding.

School systems that are prompted by the bill to participate in CEP, or increase participation, may also be relieved of administrative costs associated with distribution and collection of eligibility forms.

Additional Information

Prior Introductions: None.

Cross File: HB 287 (Delegate Hixson, *et al.*) - Ways and Means.

Information Source(s): Carroll, Harford, Montgomery, Queen Anne's, and St. Mary's counties; Maryland State Department of Education; U.S. Department of Agriculture; Department of Legislative Services

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